FILE COPY

Office Supreme Court,
FILED
JAN 4 19
CHARLES ELMORE C

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929

No. 133

THOS. A. EARLY, AS RECEIVER OF THE FARMERS AND MERCHANTS NATIONAL BANK OF LAKE CITY, S. C.,

vs.

J. L. RICHARDSON.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

BRIEF FOR J. L. RICHARDSON.

H. E. DAVIS,
Florence, S. C.;
A. C. HINDS,
Kingstree, S. C.,
Attorneys for J. L. Richardson.

(34,264)

INDEX.

Subject Index.

	Page
Statement	1
Argument	2
1. Congress has specifically and expressly recognized the right of minors to own stock in national banks	2
2. Since Congress has neither expressly nor impliedly precluded minors from becoming stockholders of national banks, then the general law on the subject applies, and under the general law an infant may own stock in a corporation	7
3. The bank accepted the minors as stockholders and all persons connected with the bank are bound by that acceptance	15
4. Appellee at no time assented to become a stockholder of the Farmers & Merchants National Bank	16
5. Appellee was never the owner of the shares of stock purchased by him for his children	17
6. In purchasing the shares of stock for his children appellee was acting within his right in the utmost good faith and rather than pervert his intention and impose upon him a burden which he did not intend to assume, the court will hold that the facts in this case constitute the appellee a trustee for his children and under the Federal statute he will not be held personally liable	23
Summary	25

Table of Cases Cited.

Ardmore State Bank v. Mason, 30 Okla., 568; 39 L. R. A. (N. S.), 292	13
Aldrich v. Bingham, 131 Fed., 363	16
Bank v. Bank, 156 N. Y., 459; 42 L. R. A., 139	18
Bank v. Dearing, 91 U. S., 29; 23 L. Ed., 196	3
Boards of Commissioners of Tippecanoe County v. Reynolds, 15 Am. Rep., 245	8

	Page
Blunt v. Walker, 31 S. C., 13	24
Chapman v. Brewer, 47 Am. S. R., 779	4
Cross v. Trust Co., 131 N. Y., 330; 27 Am. St. Rep., 497; 15 L. R. A., 606	18
Ford v. Dangerfield, 4 Rich. Eq., 95	24
Foster v. Chase, 75 Fed., 797	16
Fowler v. Gowing, 152 Fed., 801	18
Frances v. Lehre, 1 Rich. Eq., 271 (1844)	19
Gadsen v. Whaley, 14 S. C., 210	19
Harris v. Bracton, 34 S. C., 259; 13 S. E., 447	19
Indemnity Ass'n v. Hunt, 2 L. R. A., 549	7
Keyser v. Hitz, 33 L. Ed., 531	17
McElveen v. Adams, 100 S. C., 437; 94 S. E., 733	19
McNulta v. Cornbelt Bank, 164 Ill., 427; 56 Am. St. Rep., 243	14
Mercer v. Buchanan, 132 Fed., 501	18
Miller v. Ellerbe & Co., 126 Am. St. Rep., 606	10
Morgan v. Struthers, 33 L. Ed., 132	12
New England Trust Co. v. Abbott, 162 Mass., 148; 27 L. R. A., 271	14
Orr Co. v. Cushman, 104 N. Y. S., 510	4
Orth v. Orth, 57 Am. St. Rep., 185	24
Pauly v. Trust Co., 31 L. Ed., 844	18
Proctor v. Clark, 154 Mass., 45; 12 L. R. A., 721	18
Pearlstine v. Insurance Co., 74 S. C., 246; 54 S. E., 372	19
Reilly v. Whipple, 2 S. C., 277 (1868)	19
Sargent v. Insurance Co., 19 Am. Dec., 305	9
Stephens v. Follett, 43 Fed., 842	13
Stone v. Hackett, 12 Gray, 227	21
Strong v. Weir, 47 S. C., 307, 322	19
Trisconi v. Winship, 26 Am. St. Rep., 175	9
Trust Company v. Railway Co., 163 U. S., 31; 41 L. Ed., 60	8
Tutwiler v. Munford, 33 Ala., 308	24
Van Allen v. Assessors, 3 Wall., 573; 18 L. Ed., 229	8
Williams v. Vreeland, 63 L. Ed., 989	17

STATUTES CITED.

Revised Statutes, Sec.	5139	4, 14
	5152	6
	5183	3

TEXTBOOKS CITED.

	Page
7 C. J., 445	13
14 C. J., 103	7
14 C. J., 663	8
45 C. J., 394	4
36 Cyc., 1145	26
39 Cyc., 194	18
Abbott, L. D	4
Perry on Trusts, 2d Ed., Sec. 240	24
242	23
Pomeroy, Equity Jurisprudence, Sec. 1044	24

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 133

THOS. A. EARLY, AS RECEIVER OF THE FARMERS AND MERCHANTS NATIONAL BANK OF LAKE CITY, S. C.,

vs.

J. L. RICHARDSON.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

BRIEF FOR J. L. RICHARDSON.

Statement.

The Circuit Court of Appeals for the Fourth Circuit has certified to this Court the following question:

> "Is one, who purchases shares of stock of a national bank, liable for an assessment subsequently imposed by the Comptroller of the Cur-

rency upon the stock for the benefit of the creditors of the bank after the insolvency thereof, when it appears that the purchaser bought the stock from the registered holder thereof and received a certificate therefor endorsed in blank by the holder, with the intent at the time of such purchase and delivery of giving the stock to his minor child, but without knowledge at that time of the failing condition of the bank, or intent to avoid the stockholder's liability, and when, after the acceptance of the endorsed certificate from the seller, and before the insolvency, the purchaser with like knowledge and intent, promptly presents the certificate to the bank, causes the shares to be registered and a new certificate to be issued in the child's name?''

A statement of the facts pertinent to the consideration of this question accompanies the certificate. Paragraphs III and IV of appellant's statement of case are irrelevant and to some extent at variance with the statement of facts by the Circuit Court of Appeals.

We submit that the foregoing question should be answered in the negative for the following reasons:

1. Congress has specifically and expressly recognized the right of minors to own stock in national banks.

National banks are corporations the powers of which are defined and limited by the Acts of Congress authorizing the creation of such institutions. They are private institutions and do not constitute a part of any branch of the national government (Bank *vs.*

Dearing, 91 U. S. 29, 23 L. Ed. 196). The realm of their activities are prescribed by the legislative department. To determine whether or not any given act on the part of such bank is permitted or prohibited, recourse must be had to the congressional enactments on the subject. Whatever Congress, within its constitutional domain, admits courts cannot deny. Therefore, the federal statutes should first be examined to ascertain what bearing they may have on the solution of the question certified. The only Acts which are pertinent to the consideration of the question are:

(*a*) Section 5183, Revised Statutes:

> "Associations for carrying on the business of banking under this Title may be formed by any number of *natural persons,* not less in any case than five. They shall enter into articles of association, which shall specify, in general terms, the object for which the association is formed, and may contain any other provisions, *not inconsistent with law,* which the association may see fit to adopt for the regulation of its business and the conduct of its affairs. These articles shall be signed by the persons uniting to form the association, and a copy of them shall be forwarded to the Comptroller of the Currency, to be filed and preserved in his office."

The words, "natural persons", are defined to mean: "A man, woman or child, as opposed to a corporation,

which has a certain personality impressed upon it by law and is called an artificial person."

45 *C. J.* 394.
Abbott L. D.
Chapman *vs.* Brewer, 47 Am. S. R. 779.
Orr Co. *vs.* Cushman, 104 N. Y. S. 510.

We shall hereinafter show that under the general law minors have a right to own shares of the capital stock of corporations. If that be shown to be true, then a national banking association, by the articles of its association, could not prevent minors from owning its stock because to do so would be "inconsistent with law."

(*b*) Section 5139, Revised Statutes:

> "The capital stock of each association shall be divided into shares of one hundred dollars each, and be *deemed personal property,* and *transferable on the books* of the association in such manner as may be prescribed in the by-laws or articles of association. *Every person* becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all the rights and liabilities of the prior holder of such shares; and no change shall be made in the articles of association by which the rights, remedies, or security of the existing creditors of the association shall be impaired."

The declaration by Congress that the shares of capital stock are personal property is equivalent to declaring that they can be sold and transferred without any restrictions or limitations whatsoever, such being

one of the essential attributes of personal property. The transferability of the shares is left for determination by each association. Nothing to the contrary appearing, it is necessary to act in this case upon the hypothesis that the transfer to the children of Richardson was authorized by the by-laws and articles of association of the Farmers & Merchants National Bank of Lake City. Then by reason of the inherent rights in the property itself, as well as by the unrestricted provisions of the statute, the shares may be transferred to and owned by minors in like manner and to the same extent as they might take and own any article of personal property.

Upon a cursory reading of the last clause of the above section one is inclined to the view that since the transferee must succeed to the liabilities of the prior holder, a minor may not become the transferee of such stock. However, a careful study of the entire sentence reveals the intent of Congress to be the imposition of the liability upon *all* transferees, including such as may be under the disability of infancy. This intent is evidenced by the use of the words "every person", the broadest and most comprehensive term, inclusive of the entire human race—men, women and children—those *sui juris* and the incompetent. The court will not act upon the supposition that Congress intended a vain and useless thing. If the sentence was intended to apply only to persons *sui juris*, it was wholly unnecessary, because the transfer to a person capable of contracting would carry the liability as incidental to and a part of the transaction without any

enabling statutory declaration, especially if the capacity to contract is the controlling element in the assumption of liability on the part of the transferee, as is contended by appellant. It is, therefore, clear that it was not the sole purpose of Congress simply to declare that the acquisition of the rights and the assumption of the liabilities are ingredients of the contract between the seller and buyer of national-bank stock. Considering this clause in conjunction with the other clauses in the section and in connection with the other relevant sections, the only reasonable conclusion to be reached is that it was the intention of Congress to impose the liability upon the real, beneficial owner of the stock irrespective of the ability or disability to contract; to make the liability attachable to the actual ownership of the shares without regard to the manner in which they are acquired—whether by purchase, inheritance, bequest, gift or otherwise.

(*c*) Section 5152, Revised Statutes:

> "Persons holding stock as executors, administrators, guardians, or trustees, shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such trust-fund would be, if living and competent to act and hold the stock in his own name."

By this Act Congress unquestionably recognizes the right of a father to bequeath national-bank stock to

his minor child, and of a minor to inherit such shares, and of a guardian to purchase stock for his infant ward, and of trustees to hold the same for infant *cestui que trustent*. What a father can bequeath by his will, he can give in his lifetime. What an infant can inherit from his father he may receive while his parent is living. If Richardson had placed the stock in his name as guardian or trustee for his children, he could not be held personally liable.

2. Since Congress has neither expressly nor impliedly precluded minors from becoming stockholders of national banks, then the general law on the subject applies, and under the general law an infant may own stock in a corporation.

> "Infants are not necessarily precluded from becoming stockholders or members of a corporation, but, on the contrary, unless expressly or impliedly excluded they may become so." 14 *C. J.* 103.
>
> Indemnity Association *vs.* Hunt, 2 L. R. A. 549.

> "Shares of corporate stock being regarded as property, the owner of such shares may, as a general rule, dispose of them as he sees fit, unless the corporation has been dissolved, or unless the right to do so is properly restricted, or the owner's privilege of disposing of his shares has been hampered by his own action. In some jurisdictions this right is expressly provided for by statute. Although there are cases which

> appear to recognize the principle that the right to alienate stock is derived from statute or the corporate charter, as a general rule it is assumed that this right is incidental to the ownership of the shares and is based upon the broad ground that such shares are characterized by the same features as other forms of property." 14 *C. J.* 663.

In the case of Trust Company *vs.* Railway Company, 163 U. S. 31, 41 L. Ed. 60, the Supreme Court of the United States recognizes the unrestricted right of a stockholder to sell and transfer his stock in a corporation.

In the case of Boards of Commissioners of Tippecanoe County *vs.* Reynolds, 15 Am. Rep. 245, the Supreme Court of Indiana, discussing this subject, said:

> "But stock in a corporation held by an individual is his own private property, which he may sell or dispose of as he sees proper, and over which neither the corporation nor its officers have any control. It is the subject of daily commerce, and is bought and sold in market like any other marketable commodity. The directors have no control or dominion over it whatever, or duty to discharge in reference to its sale and transfer, unless it be to see that proper books and facilities are furnished for that purpose. As the property of the individual holder, he holds it as free from the dominion and control of the directors as he does his lands or other property."

In the case of Van Allen *vs.* Assessors, 3 Wall. 573, 18 L. Ed. 229, Mr. Justice Nelson, in delivering the

opinion of the Supreme Court concerning the character of national-bank stock, said:

> "This is a distinct, independent interest or property held by the shareholder like any other property that may belong to him."

In the case of Trisconi *vs.* Winship, 26 Am. St. Rep. 175, the Supreme Court of Louisiana held that stockholders in a corporation, including its directors who own stock, have the indisputable right to dispose of their stock at their pleasure.

In the case of Sargent *vs.* Insurance Company, 19 Am. Dec. 306, the Supreme Court of Massachusetts, in discussing the subject, said:

> "We think it can not be maintained that the right to the shares in the capital stock of this corporation can not be transferred without a literal compliance with the by-laws. It is personal property: 3 Dane's Abr. 108; 5 *Id.* 157. It might be conveyed by will; it might descend from an intestate to his heir. It may be assigned without deed, by a delivery of the certificate with an indorsement upon it for a valuable consideration: Quiner *vs.* Marblehead Ins. Co., 10 Mass. 476. And in such cases the legatee, heir, or assignee would be entitled to have the transfer made in the books, and to a certificate of his property. A by-law which limits the transfer of the stock to be made only at the office personally or by attorney, and with the assent of the president, would be in restraint of trade, and contrary to the general law of the commonwealth, which permits the right to personal property and incorporeal hereditaments to be transferred in various other ways."

In the case of Miller *vs.* Ellerbe & Company, 126 Am. St. Rep. 606, the Supreme Court of Nebraska discusses this subject fully, and we quote therefrom at length:

> "The question presented by the appeal is whether a corporation organized under the laws of this state can, by its by-laws, limit the number of shares of stock a person may hold at one time, and prevent a transfer of stock by a stockholder to a non-stockholder without the consent of the directors of the corporation. If it can, the decree of the District Court is wrong and should be reversed; otherwise it should be affirmed. The power to make by-laws not inconsistent with the law of the land is one of the common-law incidents to a corporate existence (Angell and Ames on Corporations, 11th Ed. Sec. 325), and is expressly conferred by statute: Comp. Stats. 1905, c. 16, Sec. 124. The transfer of stock has been uniformly regarded as a legitimate subject of corporate legislation, to enable the company to know who are stockholders, to whom dividends are to be paid, who are entitled to vote, and where the company has a lien on the stock for debts due to it from the stockholders, to enable it to prevent a transfer in derogation of its own rights. But such legislation will not be enforced beyond what is necessary to serve those purposes, where its enforcement would operate as an infringement on the property rights of others, or as an unreasonable restraint upon the disposition of property in the stock of the corporation: Farmers' & Merchants' Bank *vs.* Wasson, 48 Iowa 336, 30 Am. Rep. 398. As is said in Boone on

Corporations, Section 122: 'The right of transfer is incidental to the ownership of shares in the stock of joint-stock companies and corporations formed in pursuance of legislative authority; and a by-law which unreasonably interferes with the free exercise of this right is void, as being in restraint of trade.' See, also, 2 Thompson's Commentaries on the Law of Corporations, Sec. 2300; Angell and Ames on Corporations, 11th Ed., Secs. 353, 354; 1 Cook on Stock and Stockholders, Secs. 331, 332; 2 Cook on Corporations, Sec. 621*a*. The correlative right to purchase rests on similar grounds: 2 Thompson's Commentaries on the Law of Corporations, Sec. 2300.

"*In re* Klaus, 67 Wis. 401, 29 N. W. 582, the court said: 'A by-law of a corporation which prohibits the transfer of stock by a stockholder without the consent of all the stockholders is against public policy and void. No exception can be made in the application of this rule on the ground that the stockholders of a corporation are few, and were originally copartners, and the one against whom the by-law is invoked consented to and voted for it.' In Herring *vs.* Ruskin C. Assn. (Tenn. Ch.), 52 S. W. 327, the court held that a by-law prohibiting the transfer of stock except to the corporation, though indorsed on the certificate of stock, was void. In Chouteau Spring Co. *vs.* Harris, 20 Mo. 382, the court held that the power to regulate the transfer of stock did not include the power to restrain transfers or to prescribe to whom they might be made, but merely to prescribe the formalities to be observed in making them, and that the company could not prevent a party

from selling his stock, even to an insolvent person. In Bloede Co. *vs.* Bloede, 84 Md. 129, 57 Am. St. Rep. 373, 34 Atl. 1127, 33 L. R. A. 107, the court held that a by-law, requiring a stockholder to give notice of his intention to sell, and that the other stockholders shall thereupon have the option to purchase the stock at the price named, was an invalid restraint of alienation. In Ireland *vs.* Globe Milling Co., 21 R. I. 9, 41 Atl. 258, the court held that a statute authorizing corporations to make by-laws consistent with the laws of the state did not authorize a by-law requiring stockholders, before selling their stock, to first offer it to the corporation, and that the assignee of shares was not bound by a corporate by-law passed without authority of statute, even though his assignor had assented thereto. See, also, Morgan *vs.* Struthers, 131 U. S. 246, 9 Sup. Ct. Rep. 726, 33 L. Ed. 132; McNulta *vs.* Corn Belt Bank, 164 Ill. 427, 56 Am. St. Rep. 203, 45 N. E. 954; Moore *vs.* Bank of Commerce, 52 Mo. 377. The bylaws under consideration, tested by the authorities cited, operate as an unreasonable restriction upon the transfer of stock, and are void as an unlawful restraint upon the transfer of property."

In the case of J. Pierpont Morgan *vs.* Thomas Struthers (33 L. Ed., 132), the Supreme Court of the United States, through Mr. Justice Lamar, who delivered the opinion of the court, among other things, said:

"One essential feature of an incorporated, joint stock company is the right of each stock-

> holder, without restraint, to sell or transfer his shares at pleasure. Thompson, Liability of Stockholders, Sec. 210, and cases there cited. So well established is this right that a by-law of a bank putting restrictions upon the transferability of stock in the hands of its members has been held void as being in restraint of trade. Moore *vs.* Bank of Commerce, 52 Mo. 377. Even where the charter gives the corporation the power to regulate transfer of stocks it has been held that this power does not include the authority to restrain transfers. Choutteau Spring Company *vs.* Harris, 20 Mo. 382, citing 10 Mass. 476, and numerous other authorities."

It may be argued that the numerous authorities above cited apply to business corporations generally and not to banks where a statutory liability is provided, but the general principle of law in this respect is expressed in 7 *Corpus Juris*, 445, in the following language:

> "Stock in a bank is generally transferable the same as stock in any other corporation, and a bank ordinarily cannot prevent the transfer by refusing to recognize the purchaser as a stockholder."

In Stephens *vs.* Follett, 43 Fed. 842, it is held that "the sale or transfer of national-bank stock is governed by the same rules that apply to other incorporated companies."

In Ardmore State Bank *vs.* Mason, 30 Okla. 568, 39 L. R. A. N. S. 292, the Supreme Court of Oklahoma

declares that "A stockholder who is not indebted to the bank may sell, assign or pledge his stock free from any statutory lien of the bank."

In McNulta *vs.* Cornbelt Bank, 164 Ill. 427, 56 Am. St. Rep. 243, the Supreme Court of Illinois held that shares of bank stock are as transferable as any kind of personal property, and all unreasonable attempts to restrain the right to transfer such shares are void as against public policy.

To the same effect is the case of New England Trust Company *vs.* Abbott, 162 Mass. 148, 27 L. R. A. 271:

> "Even state legislation cannot limit or interfere with the transferable quality of national bank stock as that exists under statutes of the United States. Doty *vs.* First Nat. Bank of Larimore (1892), 17 L. R. A. 259, 3 N. Dak. 9.
>
> "A by-law of a national bank prohibiting the transfer of its stock without assent of the directors is in contravention of the act of Congress, and void. Feckheimer *vs.* National Exch. Bank of Norfolk (1884), 79 V. 80; Bank of Attica *vs.* Manufacturers & Traders Bank (1859), 20 N. Y. 501.
>
> "To the same effect it is said in Johnson *vs.* Lafflin (1878), 5 Dill. 65, affirmed (1880) 103 U. S. 800, 26 L. Ed. 532, that a national-bank association cannot take away or defeat the right of a stockholder to make a *bona fide* transfer of his stock, which right is given him by U. S. Rev. Stat., Section 5139."

Section 5139 of the Revised Statutes provides that:

> "The capital stock of each association shall be divided into shares of $100.00 each and be

> deemed personal property and transferable on the books of the association in such manner as may be prescribed in the by-laws or articles of an association."

It has not been shown that there is anything in the by-laws or articles of association of The Farmers & Merchants National Bank of Lake City prohibiting minors from owning stock in said bank.

3. The bank accepted the minors as stockholders and all persons connected with the bank are bound by that acceptance.

The only requirement of Section 5139, Revised Statutes, concerning the transfer of stock is that it shall be "transferable on the books of the association in such manner as may be prescribed in the by-laws or articles of association." Nothing to the contrary appearing, it will not be presumed that the officers of the bank violated any of the by-laws or articles of association. On the other hand, it will be presumed that the officers properly discharged their duty and that the transfers were properly made to the minors. The depositors and creditors of a national-banking association have no right to choose the stockholders of the assocation or to determine who they shall be. That is governed solely by the "by-laws or articles of association," and when those are complied with in transferring stock all persons dealing with the association are bound. The relations of the depositors and creditors to The Farmers & Merchants National Bank of Lake

City, S. C., were voluntarily assumed with imputed knowledge of the laws and regulations concerning the transfer of stock, and since those laws and regulations have been complied with in connection with the transfer of the stock in question they are bound and have no ground to complain.

4. Appellee at no time assented to become a stockholder of the Farmers & Merchants National Bank.

The cases of Foster *vs.* Chase, 75 Fed. 797, and Aldrich *vs.* Bingham, 131 Fed. 363, upon which appellent mainly relies, hold that assent is necessary to becoming a shareholder subject to the statutory liability in national banks, and that the liability must be lawfully assumed. The conclusion of the courts in those cases that minors cannot become stockholders in national banks is based solely upon the theory that minors are incapable of assenting to and assuming the liability. Therefore, appellant's case is based solely upon the necessity of assent and assumption of liability. If appellee did not assent to become a stockholder and did not assume liability, then by appellant's own argument he cannot be held liable.

Assent is a state of mind. Assumption of liability is a matter of intention. Such state of mind and intention can only be determined from what is said and done. Both the declarations and conduct of Richardson plainly manifest a dissent on his part to become a stockholder and indisputably show his intention not to assume the liability.

Attention is called to the following portion of the question certified by the Circuit Court of Appeals:

> "It appears that the purchaser bought the stock from the registered holder thereof and received a certificate therefor endorsed in blank by the holder, with intent at the time of such purchase and delivery of giving the stock to his minor child."

In the cases of Williams *vs.* Vreeland, 63 L. Ed. 989, and Keyser *vs.* Hitz, 33 L. Ed. 531, the United States Supreme Court also held that such assent and assumption of liability were necessary in order to incur statutory liability in national banks.

The placing of the stock in one's name on the books of the bank without his consent or knowledge and in violation of his instructions and contrary to his wishes cannot constitute him a stockholder of the bank and could not subject him to statutory liability. Williams *vs.* Vreeland and Keyser *vs.* Hitz, *supra.*

5. Appellee was never the owner of the shares of stock purchased by him for his children.

Although his money paid for the stock, he took the certificates from the vendors in trust for his children. He did not buy the stock for himself. He bought the shares for his children and in taking the physical possession of the certificates for the purpose of carrying them to the bank and having them placed in the names of his children he was merely acting as trustee for them.

In the case of Fowler *vs.* Gowing, 152 Fed. 801, it was held that where a father voluntarily declared a trust of certain shares in a national bank for the benefit of his children in good faith and not for the purpose of evading liability and did not hold himself out as owner of the stock, individually, he was not liable personally as a stockholder on the failure of the bank. The fact that the trust estate was wiped out by the failure of the bank did not change the trustee to a stockholder individually. The main question discussed in that case was whether or not a trust was created. This was answered in the affirmative and the court held that a parent has a perfect right in his lifetime to create a trust for his children. No notice was given to his children. Nothing was said to them. They had no knowledge of the transaction. The entire transaction was in good faith. There was no concealment. In the case of Pauly *vs.* Trust Company, 31 L. Ed. 844, the Supreme Court of the United States held that the statute above referred to governs any kind of trust and not only those created by deed, will or other written instrument.

In determining the creation and validity of a trust, the law of the domicile must control.

39 Cyc. 194;

Cross *vs.* Trust Co., 131 N. Y. 330, 27 Am. St. Rep. 497; 15 L. R. A. 606;

Proctor *vs.* Clark, 154 Mass. 45; 12 L. R. A. 721;

Mercer *vs.* Buchanan, 132 Fed. 501;

Bank *vs.* Bank, 156 N. Y. 459; 42 L. R. A. 139.

In South Carolina a trust in personal property may be created and proved by parol.

McElveen *vs.* Adams, 100 S. C. 437; 94 S. E. 733;

Pearlstine *vs.* Insurance Co., 74 S. C. 246, 54 S. E. 372;

Strong *vs.* Weir, 47 S. C. 307;

Gadsden *vs.* Whaley, 14 S. C. 210;

Harris *vs.* Bracton, 34 S. C. 259, 13 S. E. 447.

A voluntary trust in South Carolina is as valid as any other kind.

Frances *vs.* Lehre, 1 Rich. Eq. 271 (1844);

Reilly *vs.* Whipple, 2 S. C. 277 (1868).

Since the general doctrine was announced in the two cases cited, the courts in this State have recognized and enforced voluntary trusts in cases too numerous to cite. To illustrate how firmly is this principle established in the courts in South Carolina we quote at length from the case of Strong *vs.* Weir, 47 S. C., beginning at page 322:

> "In A. & E. Enc. of Law, Vol. 8, page 1323, the law is thus stated: 'The title to choses in action, as well as that to any other class of property, may be voluntarily transferred in another manner, without even a delivery, and that is by a declaration of trust. The title to a chattel can ordinarily be transferred by way of gift, as we have heretofore seen, by delivery of the article, actually or constructively, to the donee or to some person in trust for him. It

is also possible for the donor to constitute himself a trustee for the donee. In order to do this, it is only necessary for the owner, in clear and unequivocal language, or by acts amounting to the same thing, to declare that he henceforth holds the choses in action, or property, as trustee for the donee. When this is duly executed by the owner, by an act intending to be binding on himself, equity will uphold it, whether the property be legal or equitable, or whether it be capable of transfer or not. 'If the trust is perfectly created, so that the donor or settler has nothing more to do to create it, and the party seeking to enforce it has no need of further conveyance from the settler, and nothing is required of the Court but to give effect to the trust as an executed trust, it will be carried into effect, although it was without consideration, and the possession of the property was not changed.' On page 1340 of the same volume it is said: 'If the property is delivered to a trustee for the benefit of the donee, the trustee, if he accepts the trust, must execute it, and the *cestui que trust* has a good right of action against him if he does not. The donor or settler has no control over it, unless some reservation is lawfully made in the trust. So in case of a valid declaration of trust, like other gifts, when completely executed, it is irrevocable.' See, also, Gadsden *vs.* Whaley, 14 S. C. 210; Caldwell *vs.* Wilson, 2 Sp. 75; Richardson *vs.* Inglesby, 13 Rich. Eq. 59. When a trust is complete in its creation, it is not rendered revocable by reason of the fact that certain things remain to be done to carry its terms into effect.

> The creation must be *in presenti*; the execution of its provision may be, and generally is, *in futuro.*"

When appellee paid for the shares of stock and took them to the bank and instructed the bank's officers to transfer them on the books and issue new certificates in the names of the children he did all he could and all that was required of him.

This position is fully sustained by Mr. Chief Justice Bigelow of the Supreme Court of Massachusetts in the case of Stone *vs.* Hackett, 12 Gray. 227. The settler purchased stocks in several corporations in the name of "H. P. K.," by whom a declaration of trust was made. The transfer on the back of the certificates was signed and the certificates taken to the corporation for the transfer of the same on the books and the issuing of new certificates. The settler died and a question arose as to the title to the stock. Chief Justice Bigelow said:

> "The key to the solution of the question raised in this case is to be found in the equitable principle now well established and uniformly acted on by courts of chancery, that a voluntary gift or conveyance of property in trust, when fully completed and executed, will be regarded as valid and its provisions enforced and carried into effect against all persons except creditors and *bona fide* purchasers without notice. It is certainly true that a court of equity will lend no assistance towards perfecting a voluntary contract or agreement for the creation of a trust, nor regard it as binding so long as it re-

mains executory. But it is equally true that if such an agreement or contract be executed by a conveyance of property in trust, so that nothing remains to be done by the grantor or donor to complete the transfer of the title, the relation of trustee and *cestui que trust* is deemed to be established, and the equitable rights and interests arising out of the conveyance, though made without consideration, will be enforced in chancery. The leading case in which the principle is declared and acted upon is Ellison *vs.* Ellison, 6 Ves. 656, in which Lord Eldon decreed the enforcement of a trust which in its creation was wholly voluntary and without consideration. This has been followed by many other cases in which the same principle was recognized. Pulvertorf *vs.* Pulvertoft, 18 Ves. 84; *Ex parte* Pye, *ib.*, 140; Sloan *vs.* Cadogan, Sugd. Ven. & Pur. (11th Ed.) 1119; Fortescue *vs.* Barnett, 3 My. & K. 36; Wheatley *vs.* Purr, 1 Keen 551; Blakely *vs.* Brady, 2 Dru. & Wal. 311; Browne *vs.* Cavendish, 1 Jon. & La. 637; Kekewich *vs.* Manning, 1 De G., M. & G. 176. The last-named case contains a full discussion of all the authorities and a clear and accurate statement of the law upon the subject."

"The application of the principle established by these authorities is entirely decisive of the rights and duties of the parties to this suit. The conveyance or transfer of the shares to the plaintiff in her capacity of trustee was full and complete and vested in her legal title to the property. No further act was to be done by the original owner of the shares to consummate the plaintiff's title. * * *"

6. In purchasing the shares of stock for his children appellee was acting within his right in the utmost good faith, and rather than pervert his intention and impose upon him a burden which he did not intend to assume, the Court will hold that the facts in this case constitute the appellee a trustee for his children, and under the Federal statute he will not be held personally liable.

In the United States it is well established that if a corporation that requires a transfer of its stock to be made by its own officers upon its own books permits a transfer to be made by an executor, trustee or guardian of stock held by such persons in a fiduciary capacity, such corporation, knowing the trust and that the transfer is made for purposes other than such trust, will be held in equity as a constructive trustee of the stock thus wrongfully conveyed and will be liable to make it good to the *cestui que trust*. Perry on Trusts, 2nd Ed., Section 242.

As where a man makes a devise in trust by his will and names no trustee, the land descends to his heir, but in trust for the purposes named in his will, and his heirs will be required to account for the property and to convey the same to such trustees as the court might appoint. Courts of equity have inherent jurisdiction over all matters of trust and trustees and they never allow a trust to fail for want of a trustee. So if a party forbidden by law to convey his property to some person standing in a certain relation to him, as if a husband who cannot convey to his wife should make an absolute conveyance directly to her, the conveyance

would not pass the legal title, but equity would construe it into a declaration of trust and the husband into a trustee for the wife. Perry on Trusts, 2nd Ed., Sec. 240. Tutwiler *vs.* Munford, 33 Ala. 308.

It frequently happens that courts of equity construe a trust to arise from the contracts and dealings of parties although a trust is not within their contemplation and there is no fraud, actual or constructive. Constructive trusts include all those instances in which a trust is raised by the doctrines of equity for the purpose of working out justice in the most efficient manner where there is no intention of the parties to create such a relation and in most cases contrary to the intention of one holding the legal title and where there is no express or implied, written or verbal, declaration of trust.

Pomeroy, Equity Jurisprudence, Section 1044.
Orth *vs.* Orth, 57 Am. St. Rep. 185.

Constructive trusts have been said to arise through the application of the doctrine of equitable estoppel or under the broad doctrine that equity regards and treats as done what in good conscience ought to be done.

Ford *vs.* Dangerfield, 4 Rich. Eq. 95.

It is held that where the words of a will are not merely those of advice or request, but declare a trust which is void or unlawful, the legatee holds the property for the next of kin, and if there be none, then for the State.

Blunt *vs.* Walker, 31 S. C. 13 (S. C.).

Summary.

The question contained in the certificate of the Circuit Court of Appeals has not heretofore been decided by this Court and none of its previous decisions can be said to be controlling. While the authorities cited may be helpful as forming the foundation for the several views and affording the basis of the respective arguments, they are not binding upon this Court. The only laws by which the Court is actually bound in this case are the provisions of the Federal Constitution and the Acts of Congress. If by a fair and reasonable interpretation and construction of those laws it is found that they do not prohibit a father from purchasing national-bank stock for his minor child, then the question should be answered in favor of appellee, because it is conceded that he was acting in good faith, without any knowledge of the failing condition of the bank and without any intent to evade the statutory liability. Transactions entered into in good faith should be allowed to stand unless they clearly fall within the purview of some legal inhibition.

There is no express prohibition. There are clauses from which it can be reasonably implied that such transactions are sanctioned and recognized. Appellant does not point to any clause or section of any Act of Congress which either expressly or impliedly places the liability upon appellee. But let it be granted that there is some clause from which may be drawn a fair inference to the effect that the father, under such circumstances, is liable; and another clause from which

it may be reasonably implied that he is not. Then the fair inference is neutralized by the reasonable implication and the transaction would be left to stand. It requires a stronger inference or implication to invalidate a transaction entered into in good faith than to permit it to stand.

The section of the statute providing for the individual liability of shareholders was amended in 1913, 28 Stat., 273. At that time it was so well established that minors could own stock in corporations generally, as to require Congress, if it intended for minors not to own stock in national banks, to say so in positive terms. Its not doing so is strong evidence that it had no such intention.

Since under the general law minors may own and hold stock in corporations, "the statutes are not to be understood as effecting any change in the law beyond that which is *expressed or is necessarily implied from the language used.*" 36 Cyc. 1145. There is nothing expressed. There is no language used from which it must be necessarily implied that minors should not own stock in national banks. The language used tends more strongly to admit than to deny such ownership of such stock.

Appellant does not seek reliance upon the language of the statutes, but relies solely upon two decisions of United States District Courts and some English cases which adopt the theory that the father is liable because the minors are incapable of assenting to and assuming the liability. This theory is based entirely upon the absolute necessity for assent to and assumption of lia-

bility; where there is no assent and no assumption, there can be no liability. Richardson purchased the shares with the intent of giving them to his children, and, with like intent, promptly presented the certificates to the bank and caused the shares to be registered and new certificates to be issued in the names of the children. There is a total absence of assent and assumption of liability on his part. Therefore, by appellant's own argument, he is not liable.

The statute does expressly provide for the holding of stock by a trustee for the benefit of infants. One of the primary objects of courts of justice is to protect persons in their honest dealings. Another is to aid in the effectuation of a *bona fide* intent. It is the office of judicial tribunals to encourage and preserve fairness and good faith as well as to discourage and destroy dishonesty and fraud. If the court can find some reasonable ground, not inconsistent with law, to protect an honest transaction entered into in good faith, it is but serving one of the fundamental purposes of its existence to do so. It is reasonable and entirely consistent with law to hold that the facts in this case constitute Richardson a trustee for his children, and, therefore, not himself personally liable.

H. E. DAVIS,
A. C. HINDS,
Attorneys for J. L. Richardson.

OPINION

SUPREME COURT OF THE UNITED STATES.

No. 133.—October Term, 1929.

Thos. A. Early, as Receiver of the Farmers and Merchants National Bank of Lake City, S. C. *vs.* J. L. Richardson.	On Certificate from the United States Circuit Court of Appeals for the Fourth Circuit.

[February 24, 1930.]

Mr. Justice Sutherland delivered the opinion of the Court.

The court below has certified to this court the following question of law upon which instruction is desired:

"Is one, who purchases shares of stock of a national bank, liable for an assessment subsequently imposed by the Comptroller of the Currency upon the stock for the benefit of the creditors of the bank after the insolvency thereof, when it appears that the purchaser bought the stock from the registered holder thereof and received a certificate therefor endorsed in blank by the holder, with intent at the time of such purchase and delivery of giving the stock to his minor child, but without knowledge at that time of the failing condition of the bank, or intent to avoid the stockholder's liability, and when, after the acceptance of the endorsed certificate from the seller, and before the insolvency, the purchaser with like knowledge and intent, promptly presents the certificate to the bank, causes the shares to be registered and a new certificate to be issued in the child's name?"

The suit was brought to recover the amount of an assessment upon nineteen shares of the capital stock of the bank ordered by the Comptroller of the Currency because the assets of the bank were insufficient to pay creditors. Richardson had purchased the stock and received three certificates therefor endorsed in blank by the seller. He delivered these certificates to the bank with verbal instructions to register the stock and issue two new certificates for sixteen shares in the name of his minor son, and another one for three shares in the name of his minor daughter. This was done, the new certificates being retained in the custody of the bank.

When Richardson bought the stock and received the certificates therefor, endorsed by the seller, title passed and the transfer was complete as between the parties. *Johnston* v. *Laflin,* 103 U. S. 800, 804. Thereupon, as between seller and purchaser, the purchaser alone became liable for any assessment thereafter imposed; for, as between them, it would be in disregard of all equitable principles to continue against the seller the burdens of ownership after the purchaser had become entitled to all the benefits including the receipt of dividends. Whether under the facts the liability of the seller continued, as between him and the creditors, is a different matter not necessary to be considered; for, in any event, the purchaser, who alone is sued, is not concerned with that question.

That the actual owner of the stock may be held for the assessment although his name does not appear upon the transfer books of the bank, is well settled. *Ohio Valley National Bank* v. *Hulitt,* 204 U. S. 162, 167, 168; *Davis* v. *Stevens,* 17 Blatchf. 259, sc. 7 Fed. Cas. 177, 178; *Case* v. *Small,* 10 Fed. 722, 724; *Houghton* v. *Hubbell,* 91 Fed. 453.

The real question is whether the intent of Richardson to buy the stock for his minor children, and the fact that by his direction the transfer was made to them upon the books of the bank and certificates issued in their names, had the effect of relieving Richardson from liability. We think not, since the transferees, being minors, were without legal capacity to assume the obligation. Upon coming of age they would have an election either to affirm or avoid the entire transaction. In the meantime, the transfer of the stock having resulted to their disadvantage, the law will avoid it for them, thus leaving the liability of Richardson for assessments unaffected. See *Aldrich* v. *Bingham,* 131 Fed. 363; *Foster* v. *Chase, Foster* v. *Wilson,* 75 Fed. 797.

In *Foster* v. *Chase, supra,* the father bought stock in the names of his minor children, and suit was brought against him for the amount of an assessment. Disposing of the point here presented the court well said:

"The plaintiff claims that the defendant made himself liable for the assessment because of the incapacity of his children to take the stock and make themselves liable for it. He insists that they only are the shareholders, and liable, if any one is. Assent is necessary to becoming a shareholder, subject to this liability, in a national bank. *Keyser* v. *Hitz,* 133 U. S. 138, 10 Sup. Ct. 290. Minors do not seem to have anywhere the necessary legal capacity for that.

The principles upon which this disability rests are elementary and universal. 1 Bl. Comm. 492; 2 Kent, Comm. 233. In buying and paying for this stock, and having it placed on the books of the bank, the defendant acted for himself; in having it placed there in the names of his children, as with their assent, he assumed to act for them. As they could not themselves so assent as to be bound to the liabilities of a shareholder, they could not so authorize him to assent for them as to bind them. To the extent that they could not be bound he acted without legal authority, and bound only himself. Story, Ag. § 280."

There is no merit in the point, made in argument, that Richardson was a trustee for the minors, even if that would enable him to avoid personal liability, *Johnston* v. *Laflin,* 5 Dillon 65, 82; and there is nothing certified by the court below which furnishes a basis for the suggestion. Richardson, having bought with his own money, became the owner of the stock. And although the purchase was made with the intent of giving the stock to his children, *non constat* that he would not change his mind, as he was perfectly free to do. The new certificates simply were issued and registered in the names of the children, and this, if effective, would have resulted only in consummating an ordinary gift. It no more created a trust than if the donees had been persons *sui juris.* The question must be answered in the affirmative.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.